APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1963

No. 18,123

JEWEL RICHARD BROWDER, *Applicant*,

v.

CYRUS R. VANCE, et al., *Respondent*.

Before: Wilbur K. Miller, Fahy and Wright, Circuit Judges, in chambers.

Order

This cause came on for hearing on applicant's application for permission to take an appeal from an interlocutory order of the District Court and for stay, and said application was argued by counsel. On consideration whereof, it is

ORDERED by the court that the application is hereby denied.

Per Curiam.

Dated: Sept. 20, 1963

WRIGHT, *Circuit Judge, dissenting:* I would grant the motion for interlocutory appeal and extend the stay. The attack on the constitutionality of the statute is not plainly frivolous.[1] Consequently, a three-judge district court is required. 28 U.S.C. § 2282. Compare *Bailey* v. *Patterson*, 369 U.S. 31 (1962). See *Idlewild Liquor Corp.* v. *Epstein*, 370 U.S. 713 (1962), for authority of this court to entertain the appeal under the circumstances of this case.

[1] See *Beard* v. *Stahr*, 370 U.S. 41 (1962), in which the Court avoided ruling on the constitutionality of the statute in suit on the grounds urged here. See also in that case the dissenting opinion of Mr. Justice Douglas, concurred in by Mr. Justice Black, with respect to the constitutionality of this statute.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

C. A. 2182-63

JEWEL RICHARD BROWDER, *Plaintiff*

v.

CYRUS R. VANCE, SECRETARY OF THE ARMY, et al., Defendants

Memorandum and Order

This matter comes before the court on a motion by plaintiff to convene a three-judge court pursuant to Sections 2282 and 2284 of Title 28, United States Code. The motion was argued and submitted on September 6, 1963.

The plaintiff, a Lt. Colonel in the U.S. Army, was ordered removed from the active list of regular officers by the defendant Secretary of the Army in accordance with Section 3791, et. seq. of Title 10, U.S. Code. Plaintiff's removal was directed to take place on August 31, 1963.

On August 30, 1963, this court entered a Temporary Restraining Order which stayed the removal in order to prevent irreparable injury pending determination of the constitutional questions raised; and, in order to grant plaintiff a hearing on the motion to convene a three-judge court when his counsel, who was then on temporary active duty with the U.S. Army, would be present.

The facts before this court indicate that the plaintiff was acquitted of certain charges and specifications before a General Court Martial on January 26, 1962. Subsequently, on February 1, 1962, plaintiff was advised that he would be required to show cause before a board of general officers, convened pursuant to 10 U.S. Code 3791, et. seq., why he should not be removed from the active list of the regular Army for: (1) acts of personal misconduct; (2)

intentional omission or misstatements of facts in official documents; and, (3) conduct unbecoming an officer.

Plaintiff alleges that these charges arose from the same reports and information comprising the charges and specifications on which he was acquitted by a General Court Martial.

The Board of Inquiry held a hearing on December 10 and 11, 1962 at which time plaintiff was represented by counsel. Plaintiff had requested that thirty witnesses be called, but was advised that twenty-two were not available. Plaintiff waived his request as to the remaining eight.

The Board found that cause had not been shown for retention of the plaintiff and recommended that he be removed from the active list of regular officers. These findings were reviewed and sustained by the Army Board of Review for Eliminations and subsequently approved by the Secretary of the Army.

The plaintiff now prays for a three-judge court to determine the constitutional validity of the statute (10 U.S.C. 3791 et. seq.) upon which his removal is predicated. Specifically, plaintiff alleges that his hearing was not "fair and impartial" as required by Section 3792 (b) of Title 10 in that plaintiff was deprived of the right to confront and cross examine witnesses against him; the burden of proof was on the respondent before the Board; and that the proceedings subsequent to the court martial twice placed him in jeopardy for the same offense.

The sole question before this court is whether plaintiff has established that the statute raises a substantial constitutional question which should be determined by a three-judge court. It is the opinion of this court that the plaintiff has not shown that a substantial constitutional question exists and the motion to convene a three-judge court is denied.

In denying the motion for a three-judge court we do not rule on the issues raised by the complaint; and, further, the motion to dismiss by the Government is denied. We hold only that the plaintiff has not established that there is a substantial question of constitutional law arising from the language of the statute itself.

As the Court of Appeals for the District of Columbia circuit has stated:

> We do not agree with the suggestion, made during oral argument before us, that Title 28, U.S.C.A 2282, required the case to be heard and determined by a district court of three judges . . . We have already noted that the complaint did not challenge the constitutionality of the statute but alleged merely that the act of the Board amounted to deprivation of property without due process. That being true, a three-judge court was not necessary. (citations omitted) *Keyes* v. *Madsen*, 1949, 86 U.S. App. D.C. 24, 179 F. 2d 40, 43. Cert. denied, 339 U.S. 928.

This is the situation here. The Plaintiff is attacking the procedures utilized by the Army pursuant to 10 U.S.C. 3791 et. seq. and not the statute itself. The procedures may be violative of the constitutional rights of the plaintiff, but it does not necessarily follow that the Act of Congress is repugnant to the Constitution.

> The Supreme Court has also ruled that the Act of Congress providing for a court of three judges and a direct appeal to this Court, is not applicable unless the questions raised as to the constitutional validity of an Act of Congress are substantial. *Jameson and Co.* v. *Morgenthau*, 1939, 307 U.S. 171, 172, citing *California Water Service Co.* v. *Redding*, 304 U.S. 252, 254, 255.

And further, in *Jamieson*, supra at 173 the court stated:

"It does not appear to have been the intention of Congress that direct appeal should lie to this Court when administrative action and not the Act of Congress is assailed."

Therefore, in accordance with the foregoing, it is this 10th day of September 1963,

ORDERED: that plantiff's motion to convene a three-judge court pursuant to 28 U.S.C. 2282 and 2284 be, and the same hereby is, denied; and, it is further,

ORDERED: that defendants' motion to dismiss be, and the same hereby is, denied; and it is further,

ORDERED: that the defendants be, and hereby are, restrained from taking any steps for the removal of the plaintiff, Jewel Richard Browder, from the active list of the Army for a period of 48 hours from the entry of this order.

/s/ LEONARD P. WALSH
Judge

Issued at 12:30 p.m. Sept. 10, 1963

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

C. A. 2182-63

JEWEL RICHARD BROWDER, *Plaintiff*

v.

CYRUS R. VANCE, et al., *Defendants*

Order

Having heard and denied Plaintiff's motion for a three-judge court, and having heard and denied Defendants' motion to dismiss Plaintiff's complaint, and Plaintiff having requested a stay in order to give him an opportunity to appeal the interlocutory ruling of this Court, dated September 10, 1963, at 12:30 P.M., to the United States Court of Appeals for the District of Columbia, and to apply to said Court for a stay pending appeal; and it being the opinion of this Court that the said order appealed from involves a controlling question of law as to whic. there is substantial ground for difference of opinion, to wit, "that there is not a substantial question of constitutional validity arising from the language of the statute itself (10 U.S.C. 3791, et seq.);" and that an immediate appeal from the said order may materially advance the ultimate termination of this litigation, it is hereby, this 12th day of September, 1963;

ORDERED, that the Defendants, and each of them, be, and they are hereby, restrained from taking any steps for the removal of the Plaintiff, Jewel Richard Browder, from the active list of the Regular Army until September 19, 1963, at 12 o'clock Noon, and

FURTHER ORDERED that this stay is conditioned on Plaintiff's filing an application for permission to take an appeal to the United States Court of Appeals for the District of Columbia under Rule 9½ of the said Court of Appeals.

/s/ LEONARD P. WALSH
Leonard P. Walsh, *Judge*

WILLIAM G. DOWNEY, JR., Esq.
P. O. Box 6
Springfield, Virginia

SYLVIA A. BACON, Esq.
Assistant United States Attorney

A TRUE COPY TEST:
HARRY M. HULL, *Clerk*,
By FRANCES H. VANN
Deputy Clerk

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

C. A. 2182-63

JEWEL RICHARD BROWDER, *Plaintiff*

v.

CYRUS R. VANCE, et al., *Defendent*

Temporary Restraining Order

This cause came to be heard on plaintiff's motion for a temporary restraining order, and it appearing to the court that:

1. Plaintiff is an officer in the Regular Army of the United States;

2. He is about to be removed from the active list of the Regular Army as a result of administrative elimination proceedings undertaken pursuant to Sections 3791 to 3797, inclusive, of Title 10, U. S. Code, as added by Section 3(a) of the Act of July 12, 1960, Public Law 86-616;

3. In those proceedings he was denied the right to be confronted by and to cross-examine his accuser, and the statute makes no provision for compulsory process although it authorizes administrative elimination for moral and professional dereliction;

4. Those proceedings were conducted under regulations which required the allegations that were made against the plaintiff in the *ex parte* order to show cause to be disproved by him, and which expressly shifted to the plaintiff the burden of showing his innocence;

5. Plaintiff's removal from the active list of the Army would cost him both his permanent and temporary com-

missions, and his pay, allowances, and perquisites thereunto appertaining;

6. Once plaintiff is removed from the active list of the Army he cannot be restored thereto by any means short of a special Act of Congress;

7. The defendants, unless, restrained, plan to remove plaintiff from the active list of the Army, and such removal is imminently and immediately threatened to take place on August 31, 1963; and

8. The plaintiff has exhausted all of his administrative remedies, and has no adequate remedy except equitable relief from this Court.

Therefore, it appearing to the Court that defendant is about to commit the acts hereinafter referred to and that he will do so unless restrained by order of this court, and that immediate and irreparable injury, loss and damage will result to plaintiff before notice can be served and a hearing had on plaintiff's motion for a preliminary injunction, in that plaintiff's removal from the active list of the Army would cost him both his permanent and temporary commissions, his pay and allowances, pertaining thereto; and since said removal will take place on August 31, 1963, unless defendant be restrained by this Court, it is this 30th day of August, 1963,

ORDERED, that defendant Cyrus R. Vance, Secretary of the Army, his agents, servants, employees, and all persons in active concert and participation with him be, and they hereby are, restrained from taking any steps for the removal of the plaintiff, Jewel Richard Browder, from the active list of the Army; *provided*, that the plaintiff first give security in the sum of ONE HUNDRED DOLLARS ($100.00) for the payment of such costs and damages as may be incurred or suffered by any part who is found to have been wrongfully enjoined or restrained, such bond to be approved by the Court; and

IT IS FURTHER ORDERED that this order shall expire on the 19th day of September, 1963, unless prior to such time the order for good cause shown is extended for a like period, or unless the defendant consents that it may be extended for a longer period; and

IT IS FURTHER ORDERED, that plaintiff's motion for a preliminary injunction, and plaintiff's motion for a three-judge court be set down for hearing on September 10, 1963, at 10 o'clock A.M., in the United States District Court for the District of Columbia.

Issued at 12:30 P.M.
August 30, 1963

(Signed) LEONARD P. WALSH
Leonard P. Walsh, *Judge*

A TRUE COPY TEST:
HARRY M. HULL, *Clerk*.

By FRANCES H. VANN
Deputy Clerk

APPENDIX E

HEADQUARTERS
SECOND UNITED STATES ARMY
Fort George G. Meade, Maryland

20 April 1962

General Court-Martial Order
Number 5

Before a general court-martial which convened at Fort George G. Meade, Maryland, pursuant to Court-Martial Appointing Order Number 3, Headquarters Second United States Army, Fort George G. Meade, Maryland, dated 12 January 1962, was arraigned and tried:

Lieutenant Colonel Jewel R. Browder, 045583, U. S. Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland.

CHARGE I: Violation of the Uniform Code of Military Justice, Article 121

Specification 1: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 30 September 1958, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 2: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 October 1958, steal

United States currency, of a value of about $136.80, the property of the United States.

Specification 3: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 30 November 1958, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 4: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 December 1958, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 5: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 January 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 6: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 28 February 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 7: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 March 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 8: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 30 April 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 9: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 May 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 10: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 30 June 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 11: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aber-

deen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 July 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 12: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 August 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 13: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 30 September 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 14: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 October 1959 steal United States currency, of a value of about $136.80, the property of the United States.

Specification 15: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 30 November 1959, steal

United States currency, of a value of about $136.80, the property of the United States.

Specification 16: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 December 1959, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 17: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 January 1960, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 18: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 29 February 1960, steal United States currency, of a value of about $136.80, the property of the United States.

Specification 19: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, on or about 31 March 1960, steal United States currency, of a value of about $136.80, the property of the United States.

CHARGE II: Violation of the Uniform Code of Military Justice, Article 132

Specification 1: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Ordance Ammunition Command, Joliet, Illinois, on or about 31 March 1960, by presenting a voucher to Lieutenant Colonel Ross E. Leach, an officer of the United States duly authorized to approve and pay such claim, present for approval and payment a claim against the United States in the amount of $32.22 for reimbursement for travel (dependents of military personnel), which claim was false in the amount of $32.22 in that the claimed dependent, Mrs. Dana Lee Browder, was not a legal dependent of the said Lieutenant Colonel Jewel R. Browder at the time travel was performed, and was then known by the said Lieutenant Colonel Jewel R. Browder to be false.

Specification 2: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Ordnance Ammunition Command, Joliet, Illinois, on or about 23 October 1959, by presenting OAC Form 448 (Travel Summary) to Lieutenant Colonel Ross E. Leach, an officer of the United States duly authorized to approve and pay such claim, present for approval and payment a claim against the United States in the amount of $66.50 for pay for travel from Iowa Ordnance Plant, Burlington, Iowa, to Utica, New York, which claim was false and fraudulent in the amount of $66.50 in that the said Lieutenant Colonel Jewel R. Browder was not authorized pay for travel from Iowa Ordnance Plant, Burlington, Iowa, to Utica, New York, and was then known by the said Lieutenant Colonel Jewel R. Browder to be false and fraudulent.

CHARGE III: Violation of the Uniform Code of Military Justice, Article 133

Specification 1: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Iowa Ordnance Plant, Burlington, Iowa, from on or about 31 October 1959 to on or about 31 March 1960, steal United States currency, of a value of about $820.80, the property of the United States.

Specification 2: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Ordnance Ammunition Command, Joliet, Illinois, on or about 31 March 1960, by presenting a voucher to Lieutenant Colonel Ross E. Leach, an officer of the United States duly authorized to approve and pay such claim, present for approval and payment a claim against the United States in the amount of $32.22 for reimbursement for travel (dependants of military personnel), which claim was false in the amount of $32.22 in that the claimed dependent, Mrs. Dana Lee Browder, was not a legal dependent of the said Lieutenant Colonel Jewel R. Browder at the time travel was performed, and was then known by the said Lieutenant Colonel Jewel R. Browder to be false.

Specification 3: In that Lieutenant Colonel Jewel R. Browder, United States Army, Headquarters, United States Army Ordnance Aberdeen Proving Ground (4560), Aberdeen Proving Ground, Maryland, then of Iowa Ordnance Plant, Burlington, Iowa, did, at Ordnance Ammunition Command, Joliet, Illinois, on or about 23 Octboer 1959, by presenting OAC Form 448 (Travel Summary) to Lieutenant Colonel Ross E. Leach, an officer of the United States duly authorized to approve and pay such claim, present for

approval and payment a claim against the United States in the amount of $66.50 for pay for travel from Iowa Ordnance Plant, Burlington, Iowa, to Utica, New York, which claim was false and fraudulent in the amount of $66.50 in that the said Lieutenant Colonel Jewel R. Browder was not authorized pay for travel from Iowa Ordance Plant, Burlington, Iowa, to Utica, New York, and was then known by the said Lieutenant Colonel Jewel R. Browder to be false and fraudulent.

PLEAS

To all *Specifications* and Charges:	Not Guilty.

FINDINDS

Of all *Specifications*, Charge I:	Not Guilty.
Of Charge I:	Not Guilty.
Of *Specification 1*, Charge II:	Not Guilty.
Of *Specification 2*, Charge II:	Motion for finding of not guilty sustained.
Of Charge II:	Not Guilty.
Of *Specification 1*, Charge III:	Not Guilty.
Of *Specification 2*, Charge III:	Not Guilty.
Of *Specification 3*, Charge III:	Motion for finding of not guilty sustained.
Of Charge III:	Not Guilty.

The findings were announced on 26 January 1962.

BY COMMAND OF LIEUTENANT GENERAL GAITHER:

(SEAL)

Official:
M. J. BARTOSIK
Colonel, AGC
Acting Adjutant General

JOHN R. PUGH
Brigadier General, GS
Chief of Staff

APPENDIX F

(SEAL)

RWV/hlm

HEADQUARTERS
DEPARTMENT OF THE ARMY
OFFICE OF THE ADJUTANT GENERAL
WASHINGTON 25, D.C.

Suspense Date
27 July 1962

In Reply Refer To
AGPO-SE 201 Browder, Jewel R.
045583 (27 Jul 62)

SUBJECT: Notification to Show Cause for Retention in the Army

To: Commanding General
Second United States Army

1. A board of officers convened at Headquarters, Department of the Army on 17 July 1962 and determined that Lieutenant Colonel Jewel R. Browder, 045583, Ordnance Corps, United States Army Ordnance, Aberdeen Proving Ground, Maryland, be required to show cause for retention on the active list of the Regular Army because of moral or professional dereliction as evidenced by:

a. Acts of personal misconduct.

b. Intentional omission or misstatement of facts in official statements and records, for the purpose of misrepresentation.

c. Conduct unbecoming an officer.

2. You will notify this officer of this action and furnish him copies of the inclosed papers which include the selection board's determination and documentary evidence

pertinent to his case. You will further advise officer of specific elections to which he is entitled under the provisions of paragraph 16, AR 635-105. In the event officer:

a. Tenders his resignation—officer's request will be prepared in accordance with format attached as inclosure 4.

b. Requests discharge (for Regular Army officers only)—officer's request will be prepared in accordance with format attached as inclosure 5.

c. Desires to apply for voluntary retirement, if eligible—officer's request will be prepared in accordance with the provisions of AR 635-130. Format for voluntary retirement found in paragraph 23b, AR 635-130, will be amended as required by paragraph 16b(3), AR 635-105, Changes 4 dated 12 January 1962.

d. Elects to appear before board of inquiry—process in accordance with AR 635-105, as changed. It is desired that board of inquiry be instructed that any evidence relating to substandard performance of duty which tends to reflect adversely upon respondent's performance of duty, will not be considered in arriving at the board's findings and recommendations.

3. When officer elects a, b, or c above, one complete set of inclosures 1, 2, and 3, together with officer's election will be returned through channels to this office.

4. If officer is eligible and applies for retirement in lieu of further elimination action under the provisions of paragraph 16c(1), AR 635-105, elimination proceedings will continue until major command is advised that application has been accepted by Headquarters, Department of the Army.

5. This headquarters (Attention: AGPO-SE) will be advised by message immediately the election of officer in accordance with paragraph 16b, AR 635-105.

6. Control of flagging action, under AR 600-31, initiated against this officer, is the responsibility of your command.

By Order of the Secretary of the Army:

ROBERT W. VAUGHN
Adjutant General

5 Inc. (1 thru 3 in quad)

1. Selection Bd Rept.
2. Analysis and Evaluation
3. Docu Evid (1 Docu)
4. Format—Tender of Resignation
5. Format—Request for Discharge

This correspondence is marked "FOR OFFICIAL USE ONLY" solely because of the addition of inclosure(s) (3). When this inclosure(s) is (are) removed protective markings will be cancelled.

APPENDIX G

Statute Involved

The present appeal concerns the following portions of Title 10, U.S. Code, as added by Section 3(a) of the Act of July 12, 1960, Pub. L. 86-616, 74 Stat. 386, 388:

CHAPTER 360.—SEPARATION FROM REGULAR ARMY FOR MORAL OR PROFESSIONAL DERELICTION OR IN INTERESTS OF NATIONAL SECURITY

§ 3791. Selection boards: composition; duties

The Secretary of the Army may at any time convene a board of general officers to review the record of any commissioned officer on the active list of the Regular Army to determine whether he shall be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on the active list.

§ 3792. Boards of inquiry: composition; duties

(a) Boards of inquiry, each composed of three or more general officers, shall be convened at such places as the Secretary of the Army may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3791 of this title, shall be retained on the active list of the Regular Army.

(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 3791 of this title.

§ 3793. Boards of review: composition; duties

(a) Boards of review, each composed of three or more general officers, shall be convened by the Secretary of the Army, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Army under section 3792 of this title.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 3791 of this title.

§ 3794. Removal of officer: action by Secretary of the Army upon recommendation

The Secretary of the Army may remove an officer from the active list of the Regular Army if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive.

§ 3795. Rights and procedures

Each officer under consideration for removal from the active list of the Regular Army under this chapter shall be—

(1) notified in writing of the charges against him, at least 30 days before the hearing of his case by a

board of inquiry, for which he is being required to show cause for retention on the active list;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Army, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interests of national security.

In any case where any records are withheld under clause (4), the officer whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld.

§ 3796. Officers considered for removal: retirement or discharge

(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Army, the Secretary of the Army may grant his request—

(1) for voluntary retirement, if he is otherwise qualified therefor; or

(2) for discharge under subsection (b):

(b) Each officer removed from the active list of the Regular Army under this chapter shall—

(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

(2) if on that date he is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

(c) For the purposes of subsection (b)(2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

§ 3797. Officers eligible to serve on boards

(a) No officer may serve on a board under this chapter unless he is senior in regular grade to, and outranks, any officer considered by that board.

(b) No person may be a member of more than one board convened under this chapter for the same officer.